

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Thomas J. Willi, Town Administrator (954) 797-1035

PREPARED BY: Barbara McDaniel, MMC, Assistant Town Clerk

SUBJECT: Resolution

AFFECTED DISTRICT: District 1

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A WAIVER AND RELEASE OF LIEN CONCERNING THE LIEN AGREEMENT BETWEEN THE TOWN OF DAVIE AND JOLMY ENTERPRISES, INC.

REPORT IN BRIEF: On March 19, 1997, the Town and Jolmy Enterprises, Inc., entered into an agreement relating to lien security obligations established pursuant to an agreement between the State of Florida, Office of Tourism, Trade and Economic Development and the Town of Davie. The agreement required improvements associated with the Economic Development Grant the Town received for necessary infrastructure improvements. The legislature has reappropriated OTTED funding and there are no future OTTED funding opportunities. The Town will only recoup its investment in the area's infrastructure if the project is completed. The current lien is an impediment to project funding and the release allows project financing to be completed. As the lien has been subordinated, the Town will not receive any monies should foreclosure proceedings begin.

PREVIOUS ACTIONS: The Town Council approved an agreement relating to lien security obligations on March 19, 1997.

CONCURRENCES: n/a

FISCAL IMPACT: n/a

RECOMMENDATION(S): Motion to approve the resolution subject to Jolmy Enterprises, Inc. releasing any claim it may have as a result of the Town's having recorded the lien against the subject property.

Attachment(s): Resolution, letter from Mr. Burke, Waiver and Release of Lien along with attachments

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A WAIVER AND RELEASE OF LIEN CONCERNING THE LIEN AGREEMENT BETWEEN THE TOWN OF DAVIE AND JOLMY ENTERPRISES, INC.

WHEREAS, on March 19, 1997, the Town and Jolmy Enterprises, Inc., entered into an agreement relating to lien security obligations established pursuant to an agreement between the State of Florida, Office of Tourism, Trade and Economic Development and the Town of Davie; and

WHEREAS, the agreement required improvements associated with the Economic Development Grant the Town received for necessary infrastructure improvements; and

WHEREAS, the Town wishes to release any and all lien rights upon said property; and

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council hereby authorizes the Mayor to execute the Waiver and Release of Lien subject to Jolmy Enterprises releasing any claim it may have as a result of the Town's having recorded the lien against the subject property.

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2004.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2004.

LAW OFFICES

JOHNSON, ANSELMO, MURDOCH, BURKE, PIPER & McDUFF, P.A.

A PROFESSIONAL ASSOCIATION

SCOTT D. ALEXANDER, P.A.
MICHAEL T. BURKE *†
CAROLYN A. EGAN
ERIN E. GILL
JEFFREY L. HOCHMAN, P.A.
E. BRUCE JOHNSON *
CARLOS F. MARTIN
RICHARD H. McDUFF, P.A. *

2455 EAST SUNRISE BOULEVARD
SUITE 1000
FORT LAUDERDALE, FL 33304

TELEPHONE (954) 463-0100
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ROBERT E. MURDOCH
MICHAEL R. PIPER, P.A. *
WILLIAM E. PLATOW
JEREMY A. SCHINDER
DAVID M. SCHWEIGER, P.A.
TAMARA M. SCRUDDETS†
CHRISTOPHER L. SMITH

* BOARD CERTIFIED CIVIL TRIAL LAWYERS
† BOARD CERTIFIED APPELLATE LAWYERS

RETIRED:
RONALD P. ANSELMO
BURL F. GEORGE

August 4, 2004

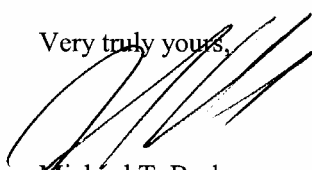
Mr. Tom Willi
Town Administrator
Town of Davie
6591 Orange Drive
Davie, FL 33314-3399

Re: State Road 84 Spur Property
Parcel 93 S 101
Our File No. 21-251 MTB

Dear Mr. Willi:

Pursuant to your request, enclosed please find a draft of a proposed Waiver and Release of Lien which I have prepared concerning the lien agreement between the Town of Davie, Florida and Jolmy Enterprises, Inc. recorded in the public records of Broward County on April 18, 1997 at OR Book 26301, Page 0861. If the Town is going to release its lien, it would also be appropriate for Jolmy Enterprises, Inc. to release any claim it may have as a result of the Town's having recorded the lien as against the subject property. Please advise if you would like me to discuss this with Attorney Steve Moody and if agreeable, prepare an appropriate release to be executed by Jolmy Enterprises, Inc.

Very truly yours,


Michael T. Burke
For the Firm

MTB/lt

Enclosure

This instrument prepared by:
Michael T. Burke, Esquire
Johnson, Anselmo, Murdoch, Burke, Piper & McDuff, P.A.
2455 East Sunrise Boulevard, Ste. 1000
Fort Lauderdale, Florida 33304

WAIVER AND RELEASE OF LIEN

Know All Men by These Presents: That the undersigned lienor, in accordance with the parties agreement and the attached Resolution hereby waives and releases its lien recorded in Official Records Book 26301 at page 0861 of the Public Records of Broward County, Florida, a copy of which is attached hereto as Exhibit A related to the property described in Exhibit B owned by Jolmy Enterprises, Inc. and does hereby release any and all lien rights upon the said property which were created by the Agreement attached hereto as Exhibit A.

In Witness Whereof, the undersigned lienor has caused this waiver and release to be executed in its name, by its proper official duly authorized this ____ day of _____, 2004.

Witnesses:

TOWN OF DAVIE, FLORIDA

Print Name: _____

By: _____

Print Name: Thomas True x

Print Name: _____

Title: Mayor of the Town of Davie

STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this ____ day of _____, 2004, by Thomas Truex as Mayor of the Town of Davie, a Florida corporation, on behalf of the Town of Davie. He is personally known to me or has produced _____ as identification.

My commission expires:
My Commission Number Is:

Print Name: _____
Notary Public, State of Florida (Seal)

Prepared by: Barry Webber, Town Attorney
Return to: Town of Davie
Town Clerk's Office
6591 Orange Drive
Davie, FL 33314-3399

AGREEMENT
Between
TOWN OF DAVIE, FLORIDA
and
JOLMY ENTERPRISES, INC.

Relating to
Lien Security for Obligations Established
Pursuant to Agreement Between the State of Florida,
Office of Tourism, Trade and Economic Development
and the Town of Davie

97-197268 T#007
04-18-97 10:17AM

K 97-108

WHEREAS, the Town of Davie, Florida (hereinafter "Town") and JOLMY ENTERPRISES, INC., a Florida corporation (hereinafter "Jolmy") caused an application to be filed by the Town of Davie to the Florida Department of Commerce, Division of Economic Development for a grant to provide partial funding for upgrading of roads from U.S. 441 to property owned by Jolmy (hereinafter "Jolmy Property"), where Jolmy will be constructing its corporate headquarters and where it will be involved in a myriad of activities as set forth in the Town's application process; and

WHEREAS, in order to facilitate the development of the aforementioned facility to be constructed upon the Jolmy Property, it is necessary that the aforescribed road improvements (hereinafter "road improvement project") be constructed so as to provide safe and adequate access to the Jolmy Property; and

WHEREAS, it is necessary to obtain the grant funds in order to fund the road improvement project; and

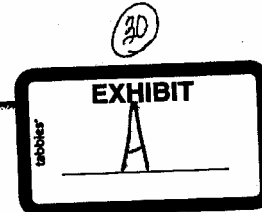
WHEREAS, the application for the grant was approved and resulted in an Agreement (hereinafter "Agreement") being entered into between the State of Florida, Office of Tourism, Trade and Economic Development (hereinafter "OTED") and the Town on behalf of Jolmy, said Agreement being dated January 8, 1997 and being approved by the Town Council by Resolution R-97-7, adopted by the Town Council on January 8, 1997, a copy of which is attached hereto as Exhibit "A" and made a part hereof; and

WHEREAS, the Agreement requires certain actions to be taken by the Town and by Jolmy; and

WHEREAS, the Town will expend substantial amounts of money relying upon Jolmy's performance of all obligations placed upon Jolmy as contemplated in the Agreement; and

BK26301PG0861

→ FEE ITEM
RETURN TO
FRONT RECORDING



WHEREAS, in addition to Jolmy's obligations with regard to the Agreement (Exhibit "A" hereto), Jolmy has the obligation to run water and sewer lines from its property to existing Town facilities as further described in Exhibit "B" attached hereto and made a part hereof; and

WHEREAS, Town is agreeable to initiate and complete construction of those required water and sewer utility lines upon the condition that Jolmy be required to reimburse the Town for all costs and expenses associated with their design and construction plus accrued interest at the rate of seven percent (7%) per annum within three (3) years of completion of same. Jolmy shall have the right to prior approval of the expenses to be incurred for water and sewer utility lines, which approval shall not be unreasonably withheld. Jolmy must respond in writing to the Town's request for approval within ten (10) business days. If Jolmy does not approve of the expense, Jolmy must provide specific reasons in writing as to why the expense is not approved. If Jolmy fails to respond in writing as required herein within the ten (10) day period, approval shall be deemed granted. In the event the Town deems the failure to approve by Jolmy as causing a delay to the project, the Town can complete the project with Jolmy's right to contest the disputed expenditure at the completion of the project; and

WHEREAS, the Town requires Jolmy to provide security to the Town for losses which may be suffered by the Town in the event of Jolmy's failure to fully comply with all requirements of the grant and utility obligations as set forth above.

NOW, THEREFORE, in consideration of the mutual undertakings agreed to herein and previously agreed to by the parties, as well as Ten Dollars (\$10.00) and other good and valuable considerations, the parties do hereby agree as follows:

1. The above recitals are true and correct and are incorporated by reference herein.
2. That in order to secure the Town from losses it may suffer in the event of Jolmy's failure to perform under the January 8, 1997 Agreement between the Town and OTTED, which includes but is not limited to Jolmy's obligation to secure the necessary permits including a building permit and initiate construction of the Jolmy corporate headquarter facility within one hundred eighty (180) days from the date of execution of the Agreement between the Town and OTTED and to further secure the utility related obligations as set forth above, Jolmy does hereby create and grant a lien in favor of the Town of Davie, Florida, against the Jolmy Property being that real property described in Exhibit "C" attached hereto and made a part hereof, for

the purpose of securing to the Town the performance required of Jolmy in order for the Town to be able to fully comply with its obligations under the Agreement between the Town and OTTED and its utility related obligations as set forth above. The lien of the Town can be subordinated to future mortgage indebtedness under the following conditions:

(a) A written request to subordinate the lien is submitted to the Town by Jolmy or its successors.

(b) Sufficient evidence is submitted to the Town evidencing to the satisfaction of the Town that the total encumbrances against the subject property (Exhibit "C" including the proposed indebtedness and the Town's lien do not exceed eighty percent (80%) of the value of the property.

(c) In the event Jolmy and the Town do not agree as to the value of the property, they shall jointly select an appraiser who shall perform an appraisal on the property. The resulting appraised value shall be deemed to be the value of the property pursuant to this provision. The cost of the appraisal shall be borne by both parties equally.

(d) Jolmy shall be put on a scheduled meeting on an expedited basis for any financial subordination request by filing the request fourteen (14) days prior to a scheduled meeting.

3. Should Jolmy fail to take all actions required of it in order for the Town to comply with said Agreement (Exhibit "A"), or if Jolmy shall default on its utility obligations, then Jolmy may be deemed in default under this agreement and this lien may be foreclosed or otherwise enforced by the Town in the same manner as a foreclosure of a mortgage on real property provided, however, that in the event of any such default by Jolmy of the Agreement, the Town shall give written notice to Jolmy and Jolmy shall have sixty (60) days from receipt of such written notice in which to cure the default to the satisfaction of OTTED. If it is determined that Jolmy's default is caused by the actions of a governmental agency (other than OTTED or its successor), then the Town shall grant a reasonable extension of time to cure so as to allow the governmental agency the opportunity to act. Should OTTED for any reason not accept Jolmy's attempts to cure and accordingly refuse to fully fund under the grant, then the Town may proceed with the foreclosure of the lien.

4. This agreement shall be recorded among the Public Records of Broward County,

Florida, immediately upon its execution by the parties.

5. Upon completion of the obligations of the Town contemplated in the Agreement between the Town and OTTED, receipt of full funding to the Town by OTTED and after OTTED fully accepts the project and accountings provided by the Town in accordance with said Agreement and upon full reimbursement to the Town for utility improvements, then the Town shall promptly cause evidence of discharge of the lien to be entered in the Official Records of Broward County.

6. This lien shall be in the amount of loss or potential loss to the Town resulting from Jolmy's non-performance under the grant or this agreement, however, in no event shall the lien exceed the sum of Two Million Dollars (\$2,000,000).

7. The lien created herein shall be released in whole or in part upon the substitution of equal value collateral in the form of a Letter of Credit from a state or national bank ("bank") in a form and content acceptable to the Town or by cash. The Town will use its best efforts to work with the bank so as to provide the Town with security of at least equal value as that contemplated to be provided for in this agreement.

8. In the event the Town defaults in its obligations under this agreement, including Exhibit "A" hereto, by failing to construct the improvements contemplated herein and Jolmy has fully performed its obligations required of it as of the date of the Town's default, then Jolmy shall have no obligation to pay the Town for any portion of the improvements which were not constructed and upon payment to the Town for all utility improvements completed to date, the Town shall release the lien created by this agreement. Should OTTED for any reason not accept the Town's attempts to cure non-Jolmy related defaults not caused in any way by Jolmy and, accordingly, refuses to fully fund under the grant, then the Town shall not seek foreclosure of its lien against the Jolmy property for road improvements but shall be entitled to proceed to foreclose the lien on the utility improvements.

9. Each party to this agreement shall be given sixty (60) days from the date of written notice by the other to cure a default under this agreement.

10. Each demand for payment to Jolmy from the Town shall be accompanied with an accounting to reflect the basis of the demand.

11. Jolmy represents and warrants that all actions have been taken by the

corporation for the authorization of the execution of this agreement by Jolmy.

12. In the event of any litigation arising under this agreement, the prevailing party shall be entitled to recovery of reasonable attorney's fees and costs.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the

19 day of MARCH, 1997.

Signed, sealed and delivered in the presence of:

[Signature]
Print Name ROBERT PAULS

[Signature]
Print Name MARIA BLACKISTON

[Signature]
Print Name STAR CROWLEY

[Signature]
Print Name JANET COLE

APPROVED AS TO FORM:

By [Signature]
Town Attorney

JOLMY ENTERPRISES, INC.,
a Florida corporation

By [Signature]
William E. Myers, President

TOWN OF DAVIE

By [Signature]
Hafry Venis, Mayor

Attest: [Signature] 3/19/97
Gail Weinfeld, Town Clerk

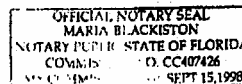
State of Florida :
County of Broward :

The foregoing Agreement was executed in my presence by William E. Myers, President of Jolmy Enterprises, Inc., who is personally known to me or who has produced as identification who acknowledged to and before me that he executed same for the purposes herein expressed on behalf of said corporation, this 19 day of MARCH, 1997.

[Signature]
Notary Public
MARIA BLACKISTON CC 407426
(Print Name & Commission Number)

My Commission Expires:

State of Florida :



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County of Broward :SS.

The foregoing Agreement was executed in my presence by Harry Venis, Mayor of the Town of Davie, a municipal corporation, who is personally known to me or who has produced as identification _____, who acknowledged to and before me that he executed same for the purposes herein expressed on behalf of the Town, this 19th day of March 1997.

Elena M Blackiston
Notary Public

(Print Name & Commission Number)

OFFICIAL NOTARY SEAL
ELENA M BLACKISTON
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC896837
MY COMMISSION EXP. OCT. 28, 2000

My Commission Expires:

BK26301P60866

EXHIBIT "A"

RESOLUTION NO. R-97-7

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT BETWEEN THE STATE OF FLORIDA OFFICE OF TOURISM, TRADE AND ECONOMIC DEVELOPMENT AND THE TOWN OF DAVIE FOR A TRANSPORTATION IMPROVEMENT PROJECT.

WHEREAS, the Town of Davie was successful in securing funding in the amount of \$1,373,000. in support of the Oakes Road/Burris Road roadway improvement project; and

WHEREAS, this project will facilitate economic growth and redevelopment of benefit to the Town and the State of Florida; and

WHEREAS, it is in the best interest of the Town of Davie to enter into this agreement and accomplish this transportation improvement project.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town acknowledges jurisdiction and maintenance responsibility for these existing roadway corridors and agrees to future maintenance and operational responsibilities after completion of the project.


SECTION 2. The Town Council of the Town of Davie hereby authorizes the Mayor to execute the agreement attached hereto as "EXHIBIT A".

SECTION 3. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS 12th DAY OF January, 1997


MAYOR/COUNCILMEMBER

ATTEST:


TOWN CLERK

APPROVED THIS 12th DAY OF January, 1997

BK26301PG0867

AGREEMENT

This Agreement is entered into this 8th day of January, 1997 between the State of Florida Office of Tourism, Trade, and Economic Development (OTTED) and the Town of Davie (Town) on behalf of Jolmy Enterprises, Inc. (EDTF Business).

OTTED has determined that the transportation project described in the Economic Development Transportation Fund Application, attached as Exhibit "A" and hereinafter referred to as the "Project," is necessary to facilitate the economic development and growth of the State as contemplated by Section 288.063, F.S.

The Town is prepared to complete the Project at an estimated total cost of \$1,673,000.

OTTED is prepared to provide \$1,373,000 toward the total project cost of construction of the transportation project described in paragraph 1.

In consideration of the mutual undertakings and agreements hereinafter set forth and agreed between the parties as follows:

1. The Project, described as follows, is in connection with the location of facilities by the EDTF Business:

Realign, upgrade and pave Oaks Road from US 441 to Burris Road, upgrade and pave Burris Road from Oaks Road to SW 30th Street (SR 84 Spur), and upgrade and pave SW 30th Street from Burris Road to the EDTF Business site.

2. The term of this Agreement shall commence upon execution and continue through January 31, 1999, unless terminated at an earlier date as provided herein.

3. Upon execution of this Agreement by OTTED and upon written request from the Town, OTTED will transfer funds to the Town to be applied toward direct Project costs on a quarterly basis consistent with project needs.

4. Funds transferred to the Town by OTTED shall be invested by the Town until their actual expenditure, in such income or revenue producing investments as authorized by law for other Town funds. All income, interest or other revenues obtained from such investment shall be considered funds of OTTED. The income, interest or other revenues shall be remitted to OTTED on a semi-annual basis within fifteen (15) days of the close of the months June and December, regardless of the month in which funds were received. Upon completion of the project, all remaining income, interest, or other revenues shall be returned to OTTED. All refund or interest checks shall be mailed to: ATTN: Administrative Assistant; Governor's Office of Tourism, Trade, and Economic Development; The Capitol; Tallahassee, Florida 32399-0001; with the Project Number referenced.

5. Project funds made available by OTTED shall not be released until the following have been satisfied:

(a) The Town shall agree by resolution to accept future maintenance and other attendant costs occurring after completion of the Project for the portion of the Project on the Town system and forward said resolution to OTTED.

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(b) The Town shall certify to OTTED that the EDTF Business referred to in paragraph 1 above has secured the necessary permits, including but not limited to, building permits, and initiated construction of the facilities referenced. If the Town fails to provide such certification to OTTED within 180 days of this contract's execution, OTTED may, at its discretion, terminate this Agreement.

(c) The Town shall verify all invoices, statements or other related documents duly submitted to the Town for pre-audit and approval by the Town.

(d) The Town shall certify that its adopted local government comprehensive plan is in compliance with Chapter 163, Part II, Florida Statutes, and that any amendments to the adopted plan related to the transportation Project or EDTF Business facility have been determined by the Department of Community Affairs to be in compliance with Chapter 163, Part II, Florida Statutes.

(e) The Town shall provide to OTTED certification and a copy of appropriate documentation substantiating that all required right-of-ways have been obtained and meet the definition of right-of-way set forth in Section 334.03(22), F.S.

6. Funds made available by OTTED pursuant to this Agreement shall be expended solely for the purpose of the Project. No such funds shall be used for the purchase of any capital equipment, landscaping, mitigation planting, water and sewer lines, for any legal action against OTTED, for the administration of the project fund or costs associated with preparation of the application.

7. Funds may not be used for the purpose of lobbying the legislature or a state agency per Section 216.347, F.S.

BK26301P60871

8. As an inducement to the transfer of funds referred to in paragraph 3 above, the Town grants the assurances that, if initiated, the Project will be carried through to its completion and will not require the expenditure of any additional funds from OTTED. The Town shall be liable for all cost overruns on the Project.

9. The Town agrees to design and construct the Project in accordance with standards promulgated by the Florida Department of Transportation (DOT) in accordance with Section 336.045, F.S., and to provide certification of same to OTTED upon completion of the Project. Such certification shall be provided by a professional engineer registered in Florida who shall certify that all design and construction for the Project is in substantial conformance with the standards established by DOT pursuant to Section 336.045, F.S.

10. Prior to OTTED's release of any requested funds, the Town shall provide OTTED with written notification of either its intent to:

(a) Award the construction of the transportation project to the lowest and best bidder in accordance with applicable state and federal statutes, rules and regulations. The Town shall then submit a copy of the bid tally sheet(s) and awarded bid contract, or

(b) Construct the transportation project utilizing existing Town employees, if the Town can complete said project within the time frame in paragraph 18 of this Agreement.

11. The Town is encouraged to utilize "minority business enterprises," as defined in Section 288.703, F.S., as subcontractors or sub-vendors when permitted under this Agreement and shall, report same to OTTED.

12. The Town agrees to observe the requirements of Section 215.422, F.S., which provides that agencies have 5 working days to inspect and approve goods and services, unless bid specifications or the purchase order specifies otherwise. With the exception of payments to health care providers for hospital, medical, or other health care services, if payment is not available within 40 days, measured from the latter of the date the invoice is received or the goods and services are received, inspected, and approved, a separate interest penalty, set by the Comptroller pursuant to Section 55.03, F.S., will be due and payable in addition to the invoice amount. To obtain the applicable interest rate, please contact the Agency's Fiscal Section at (904) 487-1011 or the Purchasing Office at (904) 488-4915. Invoices which have to be returned to a vendor because of vendor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the agency. A Vendor Ombudsman has been established within the Department of Banking and Finance. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (904) 488-2924 or by calling the State Comptroller's Hotline, 1-800-848-3792.

13. The Town further agrees:

(a) To maintain books, records, documents and other evidence according to generally accepted governmental accounting principles, procedures and practices which sufficiently and properly reflect all costs of any nature incurred by the Town in the performance of this Agreement and to retain said books, records, documents and other evidence for a period of three (3) years after termination of this Agreement.

(b) That aforesaid records, books, documents and other evidence shall be subject at all times to inspection, review or audit by state personnel of the Office of Auditor General, Office of Comptroller and other state personnel authorized by OTTED.

(c) To include these aforementioned audit and record keeping requirements in contracts and subcontracts entered into by the Town with any party for work required in the performance of this Agreement.

(d) That three (3) months after the date of execution of this Agreement and every three (3) months thereafter, the Town will provide OTTED with a report containing a detail of work completed according to the project schedule; a description of any change orders executed; and a budget summary detailing planned expenditures versus actual expenditures; and identification of minority business enterprises used as contractors and subcontractors.

14. Upon termination of this Agreement, the Town will provide the following:

(a) Certification that the Project has been completed in compliance with the terms and conditions of this Agreement.

(b) A report which shall specify (i) the total funds transferred to the Town by OTTED pursuant to this Agreement; (ii) the total income, interest or other revenues obtained from the investment of said funds; (iii) the total direct Project costs paid from funds made available by OTTED pursuant to this Agreement; (iv) the balance of any unexpended Project funds; (v) the actual amount of the EDTF Business' capital investment, and, (vi) the actual number of permanent full-time jobs created by the EDTF Business.

OK26301PG0873

15. Two (2) years after the EDTF Business has completed the construction associated with this Project, the Town will provide OTTED with the actual number of new, permanent, full-time jobs created by the EDTF Business.

16. The Town shall be responsible for audits performed in accordance this Section 216.349(2), F.S., which states that: If the amounts received exceed \$100,000, the Town must have an audit performed in accordance with the Rules of the Auditor General promulgated pursuant to s.11.45, F.S. If the amounts received exceed \$25,000 but does not exceed \$100,000, the Town must either have an audit performed in accordance with s.11.45 or have a statement prepared by an independent certified public accountant which attests that the receiving entity/organization has complied with the provision of the Economic Development Transportation Fund (EDTF) grant. However, if the amounts received do not exceed \$25,000, the Town must have an authorized representative attest, under penalties of perjury, that the Town has complied with the provision of the EDTF grant. The Town shall provide copies to OTTED of all audit reports made pursuant to Sections 11.45, 125.01(1)(x), and 218.33, Florida Statutes.

17. The Town shall act as an independent contractor and not as an employee of OTTED in the performance of this Agreement. The Town covenants and agrees that it will indemnify and hold harmless, OTTED and all of OTTED's officers, agents, and employees, from any claim, loss, damage, cost, charge or expense arising out of any act, action, neglect or omission by the Town during the performance of the contract, whether direct or indirect, and whether to any person or property to which OTTED, or said parties may be subject to, except that neither the Town nor any of its sub-contractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of OTTED or any of its officers,

agents or employees.

18. Unless terminated earlier, the construction of the Project shall commence no later than March 31, 1997 and shall be completed on or before August 31, 1998. OTTED shall have the immediate option to terminate this Agreement should the Town fail to meet either of the above required dates.

19. Upon termination or expiration of this Agreement, any funds made available by OTTED pursuant to this Agreement but have not been expended at that time, shall be returned to OTTED. All investment earnings realized pursuant to paragraph 4 above shall be returned to OTTED.

20. Any Project funds made available by OTTED pursuant to this Agreement which are determined by OTTED to have been expended by the Town in violation of this Agreement, other applicable law or regulation shall be promptly refunded in full to OTTED. Acceptance by OTTED of any documentation or certifications required or permitted to be filed by the Town shall not constitute a waiver of OTTED's rights as the funding agency to verify all information at a later date by audit or investigation.

21. This Agreement may be terminated by OTTED in the event the Town fails to perform or honor the requirements and provisions of this Agreement, upon no less than 24 hours notice in writing delivered by certified mail, return receipt requested, or in person with proof of delivery. In the event of such termination, the Town shall return funds in accordance with paragraphs 19 and 20, of this Agreement within 30 days of the termination of this Agreement.

BK26301PG0875

22. In the event the Town desires to modify any of the terms and conditions of this Agreement, the Town shall make such request for modification in writing to OTTED at anytime during the term of this Agreement. However, where the request for modification relates to changes in the project commencement and/or project completion dates, such request must be received by OTTED prior to the expiration of the current commencement or project completion date. If the request for modification of the commencement or completion date is made after the expiration of such date, OTTED shall have the option to terminate this Agreement.


23. By the execution hereof, the parties covenant that the provisions of this Agreement have been duly approved and signatories hereto are duly authorized to execute this Agreement.

24. This Agreement is executed in duplicate originals.

STATE OF FLORIDA
OFFICE OF TOURISM, TRADE,
AND ECONOMIC DEVELOPMENT

TOWN COUNCIL
TOWN OF DAVIE, FLORIDA

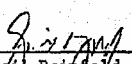
BY: _____

BY:  _____
Harry Venis

TITLE: _____

TITLE: _____ Mayor

ATTEST: _____

ATTEST:  1/8/97

TITLE: _____

TITLE: _____ Gail Reinfield
Town Clerk

Attachment:

Exhibit A -- Economic Development Transportation Fund Application

PAWPWINWPHOLDIEDTFLMY-DAV.CON

BK26301PG0876

EXHIBIT A

8K26301PG0877

June 4, 1996

Re: Economic Development Transportation Grant Application of
Town of Davie in connection with Project of Jolmy
Enterprises, Inc.

Pursuant to Rule 8-6.05, Florida Administrative Code, and the application materials adapted pursuant thereto, I write to provide the requisite statements, assurances, and projections.

The site of proposed development is uniquely well-situated to provide the economic development impact contemplated by the project. For that reason, it is the only site under consideration. The economic heart of Broward County, the airport-seaport area, pumps economic lifeblood through the highways that connect the ports to the rest of the county, region and state. As shown by the aerial photograph included with the application, the development site is due west of the Port Everglades and the Fort Lauderdale-Hollywood International Airport and at convergence of several major roadways: the Florida Turnpike, U.S. 441, I-595, and, through it, I-95.

BK26301PG0878

Ms. Alberta Simmons
Junc 4, 1996
Page 2

The Existing and Anticipated Transportation Problem Constitutes a Substantial Impediment.

The site of proposed development, although situated near and visible from multiple-lane superhighways, is not readily accessible from those highways through local streets. Those streets were built long before the highways were extensively expanded. The only feasible access to the site will be from U.S. 441 through two local streets owned and maintained by the Town of Davie, Oakes Road and Burris Road. Without widening and improvement of those roads, it would not be feasible to establish, construct, maintain or operate the contemplated project. The data in the application reflecting the dramatic (twenty-fold) increase in vehicle volume attests to the insufficiency of the existing roads.

What Is the Transportation Problem And How Will It Be Alleviated?

The main access to the proposed site is provided by a roadway connection to Florida's Turnpike, Interstate 595 and U.S. 441 at a signalized intersection of relocated Oakes Road. This intersection at Oakes Road was constructed by the Florida Department of Transportation during the construction of I-595 and provides for a less than desirable access as a result of original right-of-way limitations. There is today a great number of accidents occurring with over turned vehicles as they enter Oakes Road from U.S. 441. This two lane connection that intersects Burris Road which is a narrow two lane roadway going back to what is referred to the State Road 84 spur which is a two-way roadway serving the site. As a result of the curves and the number of accidents that have happened due to the narrowness of the facility without an improvement, this proposed facility cannot be developed.

The location is unique in that it does provide direct access via U.S. 441 to Florida's Turnpike, I-595 with connections then to I-95 and to I-75 to the west. This site is also uniquely located as to provide one of the long term recommendations in a study undertaken by Florida's Turnpike in the need to try and locate one of the major regional transportation truck stops and manufacturing facilities related to the trucking industry within the proximity to the large Dade and Broward County market. A copy of the DOT study is attached in the appendix to the application.

BK26301PG0879

Ms. Alberta Simmons
June 4, 1996
Page 3

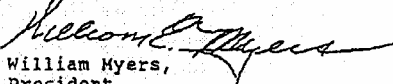
Number Of Full-Time Permanent Positions, Average Wages, And Job Training Strategies.

There will be 250 full-time permanent positions paying an average hourly wage of \$12.60.

Proposed Plans For The Facility.

The proposed plans for the facility are described in part II of the application. I greatly appreciate consideration of this proposal.

Sincerely,


William Myers,
President

BK26301PG0880

ECONOMIC DEVELOPMENT TRANSPORTATION FUND APPLICATION
FLORIDA DEPARTMENT OF COMMERCE
DIVISION OF ECONOMIC DEVELOPMENT

Applicants are advised that this application must be submitted in accordance with the provisions of Florida Statutes, Section 288.063, and Rule 8-6 FAC adopted by the Division of Economic Development.

I. APPLICANT

Local Government Applicant: Town of Davie

Local Government Federal Employee Identification Number

596-046-527

Name of Primary Contact: Robert F. Flatley

Title: Town Administrator

Address: 6591 Orange Drive

Davie Florida 33314-3399
(City) (State) (Zip)

Telephone: (954) 797-1035 Fax: (954) 797-2061

II. COMPANY PROVIDING EMPLOYMENT (only one company may be listed)

Company: Jolmv Enterprises, Inc.

Primary Contact: William Myers

Title: President

Address: 4751 Southwest 30 Street

Davie Florida 33314
(City) (State) (Zip)

Telephone: (954) 583-7212 Fax: (954) 791-5913

Principal Business Activity: Corporate Headquarters

SIC Code Number: 4231, 4731, 8741

Type of Facility: New (X) , Existing () Expansion ()

Estimated Time for Construction: 15 months

Estimated Square Feet of Facility: corporate headquarters -
15,000 square feet

Full-time Employment Generated/Retained:

New 250 Retained
(Must be at least 100 if grant request is \$200,000-
\$1,000,000 or 200 if request is greater than \$1,000,000)

New Capital Investment Generated: \$22 million

Briefly Describe the Facility (New or Existing) or the Expansion:

The proposed facility shall house the corporate headquarters for Volmv Enterprises, Inc., a company that will be involved in a myriad of activities including freight forwarding, duty-free component assembly, and other export-import activity akin to manufacturing.

III. TRANSPORTATION (Attach a rough site plan with facility in relation to the requested transportation improvements.)

- A. Briefly describe the transportation problem which is an impediment to the company described above and give its importance to the company's decision.

The Site is uniquely located in that it is in immediate proximity via U.S. 441 to Florida's Turnpike, I-595 with connections then to I-95 and to I-75 and the Sawgrass Expressway to the west. Unfortunately, however, the existing immediate or local roadway system is inadequate to address the anticipated requirements of the corporate headquarters. The main access to the proposed site is provided by Oakes Road, a roadway directly connected to Florida's Turnpike and Interstate 595 from U.S. 441 at a signalized intersection. The Oakes Road/U.S. 441 intersection was constructed by the Florida Department of Transportation during the construction of I-595.

The intersection and adjacent two-lane local roadways create difficulties in access and are insufficient to accommodate the proposed development. Without the necessary roadway improvements, Volmv Enterprises, Inc. corporate headquarters cannot be developed at the site. Therefore, the funding of the required roadway improvements is critical to the company's decision to develop at that location.

- B. Briefly describe the transportation project which will alleviate the transportation problem:

This project will provide for a four lane non divided curb and gutter section of relocated Oakes Road with a new, modified intersection at U.S. 441. This will provide for approximately 2200 feet of roadway that will provide for a connection to Burris Road and a smooth transition up to Southwest 47th Avenue, another major thoroughfare that serves Florida's Turnpike from Griffin Road. Along with improvements to Oakes Road will be approximately 2700 feet of Burris Road which will also be four lane non divided curb and gutter section and the final 1000 feet of State Road 84 Spur.

C. Estimated Cost of the Transportation Project:

Construction: \$ 1,023,000
Right-of-Way: \$ 300,000 *
Design & Engineering: \$ 350,000

TOTAL COST: \$ 1,673,000

*May be used as matching dollars if acquisition is required from a third party in order to construct the transportation facility.

D. Transportation Project Funding Sources:

City: \$ 150,000
County: \$ 0
Company: \$ 0

Request from the Economic Development Transportation Fund
(\$2,000,000 maximum): \$ 1,373,000

TOTAL COST: \$ 1,673,000

(NOTE: Must add up to Total Cost in C. above)

E. Estimated time for construction: 15 months

IV. PROJECT LOCATION **

A. Located in an Enterprise Zone? ** Yes X No

B. Located in the Target Area of a Community Development Corporation? ** Yes X No

** The project location is within a Community Redevelopment Area, so designated pursuant to the Town of Davie Determination of Blight Study prepared in July 1994 and approved by the Davie Town Council in September 1994. A copy of the Study and Davie Town Resolution No. R-94-287 is attached hereto in the Appendix.

V. SELECTED ECONOMIC INDICATIONS

A. Unemployment Rate: 4.4%
Information Source: Fl. Bureau of Labor Market Information:
Town of Davie (April 1996)

B. Per Capita Income: \$23,840
Information Source: U.S. Dept. of Commerce: Broward
County, FL (1993)

C. Poverty Rate: 10.2%
Information Source: Florida Census Handbook, Table 5.15
"Persons Below Poverty Level, Broward
County" (1990)

All Section V. information supplied by Jov Harrell, Florida
Bureau of Labor Market Information, on May 29, 1996.

VI. OTHER CONSIDERATIONS

- A. Is the adopted local government comprehensive plan for the jurisdiction in compliance with Chapter 163, Part II, Florida Statutes? ☒ Yes ☐ No

If not, what is the expected time for compliance? N/A

- B. What is the Future Land Use Map designation for the business facility site? The effective Land Use Plan for the business facility is the Unincorporated Area Land Use Plan which designates this property for Industrial use.

- C. Are the transportation project and business facility consistent with the adopted local government comprehensive plan? ☒ Yes ☐ No

*The business facility is undergoing annexation to the Town of Davie. Until the Town of Davie Future Land Use Element is amended to include this property, the Unincorporated Area Land Use Plan shall be the effective Land Use Plan for the site and the business facility is consistent with that Plan. The Transportation Project is located within the Town of Davie and is consistent with the Town of Davie Future Land Use Element of the Comprehensive Plan.

If not, describe the inconsistency and give the time frame for amending the plan: N/A

- D. Does construction of the business facility trigger concurrency requirements other than for transportation facilities? ☒ Yes ☐ No

If so, explain: The construction of the business facility shall address concurrency requirements involving stormwater drainage, potable water service, and wastewater treatment service. All requirements shall be satisfied through the development review process. At this time, every indication suggests the developer's ability to address each concurrency requirement satisfactorily.

- E. Does construction of the business facility trigger concurrency requirements for transportation facilities? ☒ Yes ☐ No

If yes, what transportation management alternatives have been considered? The Site is within the Comprehensive Plan designated Urban Infill Area adopted under State Planning Guidelines to encourage development in these areas and as such this Site is subject to a transit impact fee in lieu of satisfying traffic roadway concurrency standards.

- F. Does the adopted plan include an Economic Development Element? ☐ Yes ☒ No

The Town of Davie is in the process of developing the optional Economic Development Element of its Comprehensive Plan pursuant to adopted recommendations resulting from the Evaluation and Appraisal Review Process.

- G. Is the applicant's transportation project linked to others publicly funded economic development programs? If so, how does it further those efforts?

Yes, this project is linked to other publicly funded economic development programs. Jobs training is under the auspices of lead education and training authorities, including the Broward Employment and Training Administration (BETA). Also, the Education, Research and Development Authority (ERTA) offers partnership opportunities to maximize collaborative public/private relationships.

- H. Will low to moderate income workers be eligible for employment within this facility? ☒ Yes ☐ No

If not, why not?

VII. PROJECT INFORMATION:

Location of Project (Road Number):

U.S. 441 State _____ County _____ City X (no number)

Party responsible for maintenance and upkeep:

State _____ County _____ City X
(if more than one is applicable, please indicate.)

Total Length of Project: 1.12 mile(s)

Brief Description of Project: four-lane undivided roadway connecting proposed site with U.S. 441, south of the I-595 interchange (please see exhibits).

Is there an alternative that would provide more cost effective access to the project? ☐ Yes ☒ No

Are there any additional traffic impacts? ☐ Yes ☒ No If yes, does the project provide for additional impact?

☐ Yes ☐ No If no, please explain:

The proposed roadway improvements correct a dysfunctional access roadway system. This access roadway system connects to a regional transportation network with sufficient capacity to accommodate the proposed development.

VIII. TRAFFIC IMPACTS FOR PROJECTS INVOLVING STATE HIGHWAYS ONLY
Traffic generation estimates (in number of vehicles daily):

1. Number of Cars 2242 Number of Trucks 871

AM Peak Hour 6:00 a.m. to 8:00 a.m.: Indicate Number of:

2. Inbound Cars 65 Inbound Trucks 32

Outbound Cars 98 Outbound Trucks 49

PM Peak Hour 4:00 p.m. to 6:00 p.m.: Indicate Number of:

3. Inbound Cars 38 Inbound Trucks 76

Outbound Cars 44 Outbound Trucks 85

If this application is for a city road, the city must agree to maintain the road. If a county road is involved, the county must agree to maintain the road. This will be stipulated in all contracts involving expenditure of the Economic Development Transportation Fund.

DOT form, letter from applicant, letter from the benefiting company and a map showing the relationship of the facility to the transportation project must accompany this application.

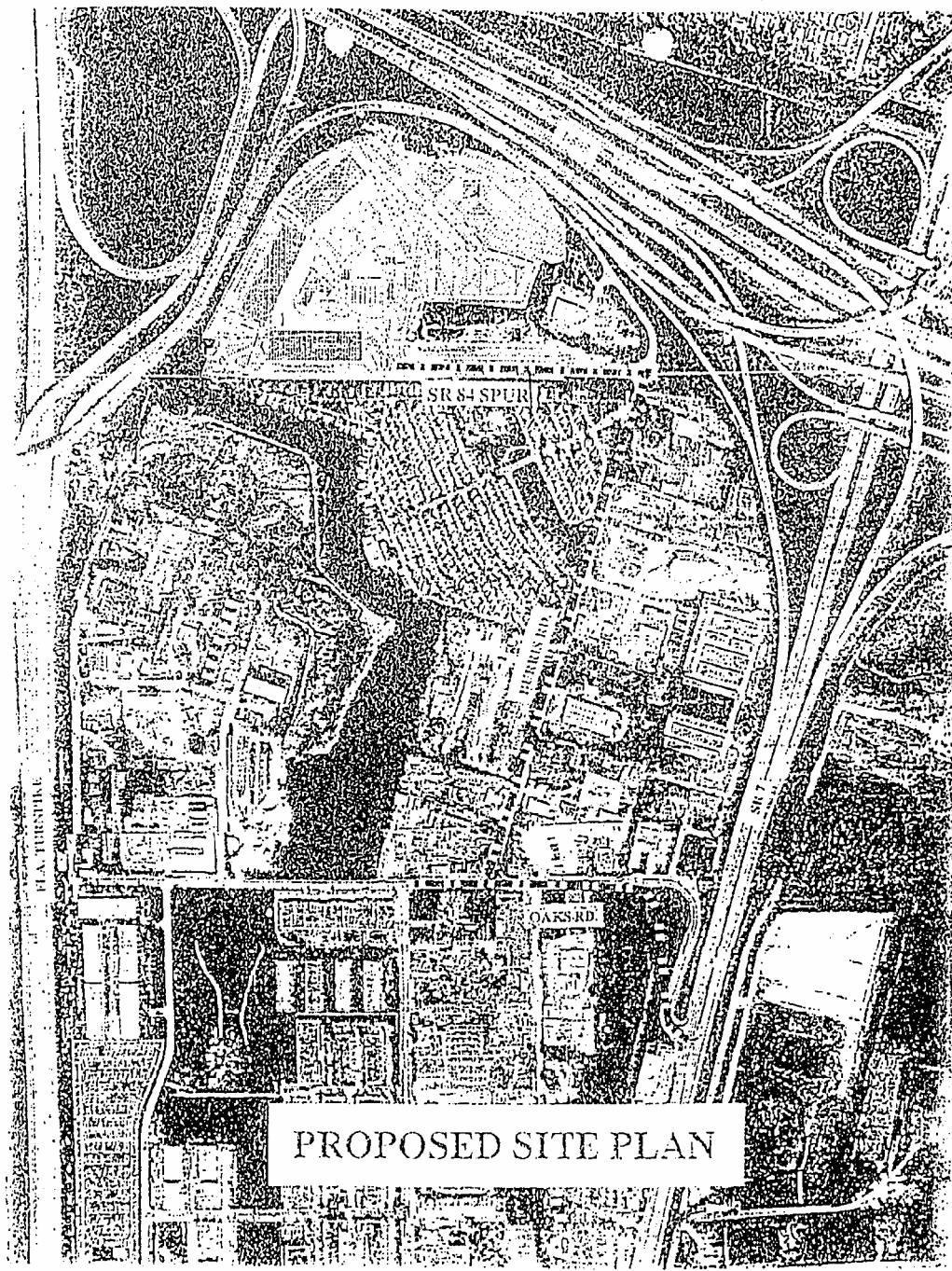
Please type: Harry Venis
(Name)
Mavor, Town of Davie
(Title)

Signature: [Signature]
(Signature must be that of an elected city or county official)

Specific Authority 288.063, 120.53 (1) (a), F.S.

Laws Implemented 288.063, 120.53 (1) (a), F.S.

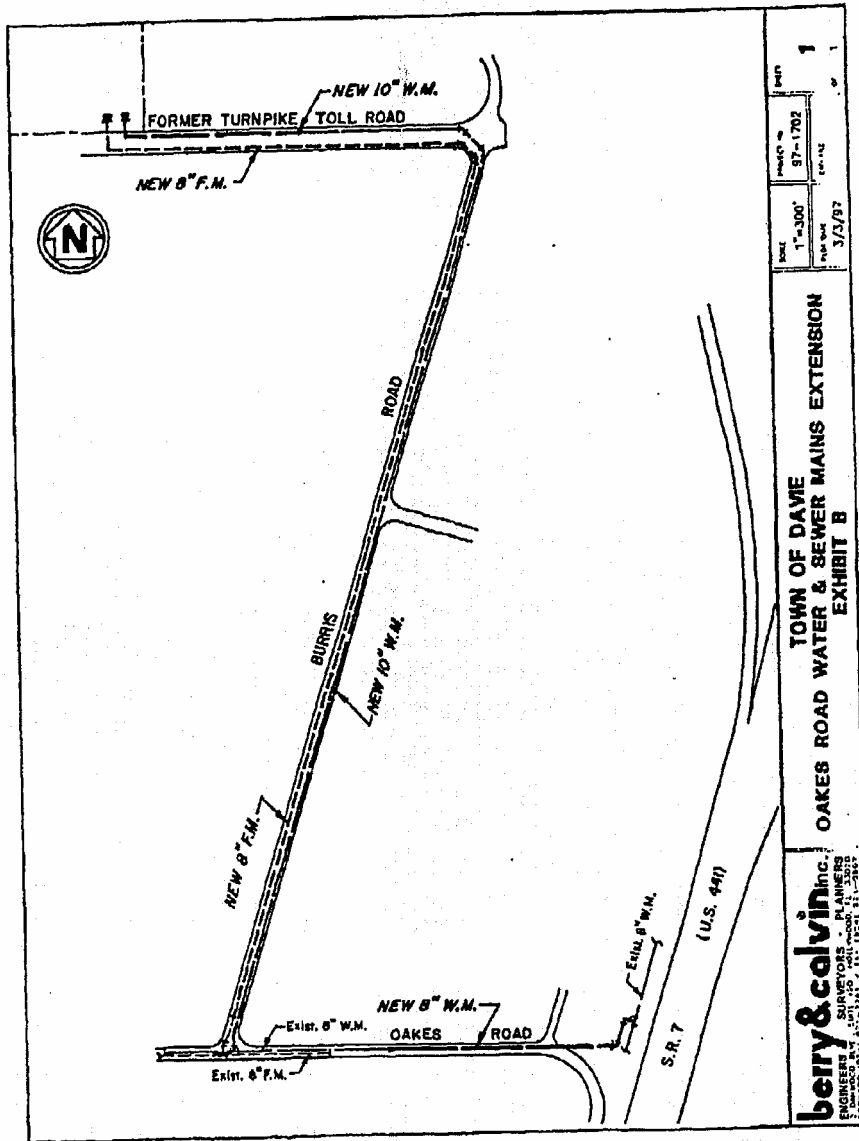
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PROPOSED SITE PLAN

22630101-107

EXHIBIT "B"



| | | | |
|---|--|---|--|
| berry & calvin inc. ENGINEERS SURVEYORS PLANNERS 1111 12th St. N. Suite 100 Grand Rapids, MI 49503-1111 Phone: 616-233-1111 / 616-233-1112 | | TOWN OF DAVIE OAKES ROAD WATER & SEWER MAINS EXTENSION EXHIBIT B | Date: 3/2/97 Project No: 97-1702 Scale: 1"=300' Sheet: 1 of 1 |
|---|--|---|--|

2002

BERRY & CALVIN

305 921 8807

03/04/97 10:17

BK26301PG0888

State of Florida :
:SS.
County of Broward :

The foregoing Agreement was executed in my presence by William E. Myers, President of Jolmy Enterprises, Inc., who is personally known to me or who has produced as identification _____, who acknowledged to and before me that he executed same for the purposes herein expressed on behalf of said corporation, this ____ day of _____, 1997.

Notary Public
(Print Name & Commission Number)

My Commission Expires:

State of Florida :
:SS.
County of Broward :

The foregoing Agreement was executed in my presence by Harry Venis, Mayor of the Town of Davie, a municipal corporation, who is personally known to me or who has produced as identification _____, who acknowledged to and before me that he executed same for the purposes herein expressed on behalf of the Town, this ____ day of _____, 1997.

Notary Public
(Print Name & Commission Number)

My Commission Expires:

8X26301PG0889

A portion of FERNCREST RIDGE, according to the Plat thereof, as recorded in Plat Book 49, at Page 29, of the Public Records of Broward County, Florida; more particularly described as follows:

Commence at the Northeast corner of said Plat, same being the Southeast corner of Tract 1, Tier 9 of NEWMAN'S SURVEY, according to the Plat thereof, as recorded in Plat Book 2, Page 26, of the Public Records of Dade County, Florida; thence South 14°50'17" West, along the East line of aforesaid Plat of FERNCREST RIDGE, 262.07 feet to the Point of Beginning; thence continue South 14°50'17" West, along said East line 368.93 feet; thence North 87°36'09" West, 533.83 feet to the South line of Tract 2 of aforesaid Plat of NEWMAN'S SURVEY; thence North 75°09'43" West, along said South line, 79.82 feet; thence South 14°50'17" West, 242.01 feet to a South line of aforesaid Plat of FERNCREST RIDGE; thence North 89°56'59" West, along said South line, 79.72 feet; thence North 85°42'13" West, continue along said South line 201.56 feet; thence South 89°31'58" West, continue along said South line, 300.00 feet; thence South 84°46'08" West, continue along said South line, 38.12 feet to the Southwest corner of said Plat of FERNCREST RIDGE; thence North 14°50'17" East, along a West line of said Plat, 390.82 feet to the Southeast corner of Tract 2, Tier 13 of aforesaid Plat of NEWMAN'S SURVEY; thence North 75°09'43" West, along aforesaid South line of said Tract 2, 132.06 feet; thence North 22°52'26" East 52.57 feet; thence North 83°46'34" East 113.11 feet; thence North 14°50'17" East, 157.00 feet; thence North 83°46'34" East, 138.99 feet to the Northeast corner of the South one-half (S1) of said Tract 2, Tier 13; thence North 14°50'17" East, along the East line of said Tract 2, Tier 13; same being the West line of aforesaid Plat of FERNCREST RIDGE, 372.00 feet to the Northeast corner of aforesaid Tract 2, Tier 13; thence South 75°09'43" East, along said North line of said Tract 2, 343.67 feet; thence South 84°34'02" East, 258.54 feet; thence South 46°33'49" East, 154.11 feet; thence South 50°28'26" East, 380.71 feet; thence South 80°43'06" East, 112.84 feet to the Point of Beginning.

Said lands lying in Broward County, Florida, containing 22.35 acres, more or less.

BK 2630 | PG 0890

RESOLUTION NO. R-97-108

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE APPROPRIATE TOWN OFFICIALS TO ENTER INTO AN AGREEMENT BETWEEN THE TOWN OF DAVIE AND JOLMY ENTERPRISES, INC. RELATING TO THE PROVISION OF A LIEN FOR THE SECURITY TO SECURE THE REQUIRED IMPROVEMENTS ASSOCIATED WITH THE ECONOMIC DEVELOPMENT GRANT RECEIVED BY THE TOWN OF DAVIE FOR INFRASTRUCTURE IMPROVEMENTS NECESSARY FOR THE JOLMY ENTERPRISES DEVELOPMENT; AND TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT.

WHEREAS, the Town of Davie was successful in securing an economic development grant for the upgrading of roads from U.S. 441 to the Jolmy property; and

WHEREAS, the grant award was contingent upon completion of various improvements outlined in the grant application; and

WHEREAS, Jolmy Enterprises wishes to submit a lien security to secure the Town's obligations relating to the grant and ancillary utility construction necessary to facilitate completion of the roadway improvements.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1: The Town Council of the Town of Davie does hereby authorize the appropriate Town officials to enter into an Agreement, attached hereto as Exhibit "A", between Jolmy Enterprises, Inc., and the Town of Davie; providing for a property lien security to secure the required improvements.

SECTION 2: This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS 19th DAY OF March, 1997.


MAYOR/COUNCILMEMBER

ATTEST:


TOWN CLERK

APPROVED THIS 19th DAY OF March, 1997.

RECORDED IN THE OFFICIAL RECORDS BOOK
OF BROWARD COUNTY, FLORIDA
COUNTY ADMINISTRATOR

BK26301 PG0891

A portion of FERNCREST RIDGE, according to the Plat thereof, as recorded in Plat Book 49, at Page 29, of the Public Records of Broward County, Florida; more particularly described as follows:

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Said lands lying in Broward County, Florida, containing 22.35 acres, more or less.

BK 2630 | PG 0890

EXHIBIT

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